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SUBJECT: PERU: SPECIAL 301 REVIEW

REF: STATE 00009475

¶1. (U) Summary. Post concurs with industry recommendations that Peru remain on USTR's Special 301 Watch List for 2008. Peru continues to face high levels of patent, copyright and trademark infringements in all sectors. Challenges include adequate funding, increasing inspections, strengthening enforcement and border controls, combating public acceptance of pirated and counterfeit goods, enacting deterrent sentences, and further reducing government use of unlicensed software. On the positive side, El Instituto Nacional de Defensa de la Competencia y de la Proteccion de la Propiedad Intelectual (INDECOPI), the Government of Peru's (GOP) IPR administrative agency, has focused on enforcement training, continues an active public campaign in partnership with the private sector dedicated to educating the public on the harmful affects of purchasing pirated and counterfeit goods, and continues to make improvements, including legislative, to meet the requirements established in the U.S. Peru Trade Promotion Agreement (PTPA). End Summary.

GOP Efforts and...

¶2. (U) The GOP has made some effort to combat IP violations, and is committed to further improvements by approving the PTPA; however more resources need to be allocated in the area of investigations and enforcement. INDECOPI's trademark, patent and copyright offices do good work with limited staff and funding. INDECOPI officials and public ministry prosecutors have ex officio powers, allowing them to conduct investigations and seizures, and file charges, without an industry complaint. However, INDECOPI continues to be restrained by a lack of financial resources to perform their mandate.

Laws and Regulations

¶3. (U) Peru's IP laws are generally adequate and TRIPS compliant. The U.S.-Peru Trade Promotion Agreement (PTPA) would correct shortcomings and increase some protections beyond TRIPS requirements. For example, the PTPA includes provisions that enhance trademark protections, provide copyright protection related to the Internet, mandate government use of legal software, protect confidential pharmaceutical and agrochemical test data and trade

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secrets, and increase penalties for IP violations. INDECOPI has

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indicated that the legislative changes are being made and the agency is well on track to meet the requirements established by the PTPA.

Overall Infringement Levels Increased in 2007

¶4. (U) Infringement levels for 2007 remained steady or increased from 2006 levels. According to the International Intellectual Property Alliance's (IIPA) 2007 estimates, 98% of sound recordings (same level as in 2006) and 73% of business software (up from 71% in 2006) in Peru were pirated, representing a loss of \$98.5 million (up from \$85.5 million in 2006). Pirated CDs and DVDs, illegal copies of books, and counterfeit clothing and toys can easily be found throughout the country at markets, on street corners, and in beach areas.

...Public Indifference

¶5. (U) Changing the public's perception is perhaps one of the more difficult challenges facing those who want to improve IPR protection in Peru. INDECOPI continues to sponsor numerous public awareness campaigns to improve the public's perception and promote the legal purchase of original products.

¶6. (U) April 20-27 was "Intellectual Property Week" in Peru, celebrated with giveaways, discounts, and massive destructions of seized products. INDECOPI commemorated its fifth annual Destruction Day, destroying confiscated pirated CDs and DVDs, and educating the public about how IPR violations hurt the overall well-being of Peruvians. Among other events, the movie industry hosted a night at the cinema with reduced ticket prices.

...Patents

¶7. (U) Confidential test data submitted for the marketing approval of pharmaceutical and agrochemical products remains unprotected, though the PTPA should resolve this once implemented.

...Copyrights

¶8. (U) INDECOPI's Copyrights Office conducted 21 inspections of businesses alleged to use illegal software and music CDs in 2007, this represents a decrease from 270 inspections in 2006. No formal cases reached the courts. Fines totaled over \$840,000.

Government Software Improvements

¶9. (U) In 2003, the GOP passed a decree mandating that all government agencies use legally procured software by March 31, 2005. This deadline was extended to December 31, 2006, and, regrettably, again to December 31, 2008. The percentage of central government computers carrying pirated software is 43%. The GOP is making an effort to meet its targets before the new deadline, and committed to resolve this problem in the PTPA.

Law Enforcement

¶10. (U) In 2007, 47 operations were conducted: 29 by the Fiscal Police (DIRPOFIS), 17 by SUNAT (tax authority) and 1 by INDECOPI. In 2007, SUNAT created a special group to tackle the street piracy problem. In November 2007, SUNAT conducted a major street raid and seized about 200,000 recorded pirate music CDs and 70,000 blank CD-Rs. The number of operations is down from 65 operations led in ¶2006.

Prosecutors and Judiciary: Minimal Convictions

¶11. (U) Despite the creation in November 2006, of four special courts and one special appeal court with national jurisdiction on IPR crimes, amendments to penalize recidivist offenders with stronger sanctions, and additional penalties for more crimes, the number of penal convictions and deterrent sentences in 2007 remained minimal. The average 2007 sentence was a three-year suspended sentence and the average 2007 fine was S/1000 (nuevo soles, approximately US\$300).

¶12. (U) In addition to the regular training INDECOPI and Customs provide law enforcement officials, these entities have developed extensive training for the new judges and prosecutors. Thanks to USPTO, post has sent several judges and over twenty government officials for trainings on enforcement, patent and trademark administration in Alexandria, Virginia. Post is working with USPTO to coordinate IPR training in Peru this coming year.

Treaties

¶13. (U) Under the PTPA, Peru has agreed to ratify or accede to the following agreements by the date of entry into force of the agreement: The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974); the Budapest Treaty on the international Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure (1977), as amended in 1980; the WIPO Copyright Treaty (1996); and the WIPO Performances and Phonograms Treaty (1996). Peru shall ratify or accede to the following agreements by January 1, 2008, or the date of entry into force of the PTPA, whichever is later: the Patent Cooperation Treaty (1970), as amended in 1979; the Trademark Law Treaty (1994); and the International Convention for the Protection of New Varieties of Plants (1991). Peru shall make all reasonable efforts to ratify or accede to the following agreements: the Patent Law Treaty (2000); the Hague Agreement Concerning the International Registration of Industrial Designs (1999); and, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

Comment: Recommend No Change in Status

¶14. (U) Post recommends that Peru remain on USTR's Special 301 Watch List due to the continued high levels of copyright and trademark infringements, the lack of protection for confidential test data submitted for the marketing approval of pharmaceutical and agrochemical products, and the need for increased enforcement efforts, particularly the application of strong penalties for IPR violators necessary for deterrence. Post recognizes the efforts being made by INDECOPI to address these issues, particularly as Peru works towards the implementation of the PTPA; however, additional work must be achieved and resources allocated to address IP enforcement before Post can recommend a change in status.

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